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IN THE UNITED STATES DISTRICT COURT
 DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,	:	Case No. 2:24-cr-00250-DS
	:	
Plaintiff,	:	
	:	
v.	:	FOURTH CERTIFICATE OF
	:	COMPLIANCE AND REQUEST FOR
	:	RECIPROCAL DISCOVERY
ERIC NICHOLAS GAPCO,	:	
	:	
Defendant.	:	Judge: DAVID SAM

The United States of America (“United States”), through its counsel, hereby files its Fourth Certificate of Compliance with its discovery obligations in this case and Request for Reciprocal Discovery from the defendant.

The United States gives notice that the following, in accordance with FRCP 16(a)(1)(E), and the Protective Order filed under document number 35, is being or has been provided to counsel for the defendant via USAfx:

<u>Involved Parties</u>	<u>Description</u>	<u>Beginning Bates</u>	<u>Ending Bates</u>
Gapco, Eric	Criminal History	IP-EG-01-00001	IP-EG-01-00001.04
<u>Reports</u>			
Salt Lake PD	Case report no. 2024-162077	RPT-SLPD-01-00001	RPT-SLPD-01-00001.28
Salt Lake PD	CAD Log no. 2024-162077	RPT-SLPD-01-00002	RPT-SLPD-01-00002.13
Salt Lake PD	Watch Log no. 2024-162077	RPT-SLPD-01-00003	RPT-SLPD-01-00003.03
<u>Business Records</u>			
American Airlines	Flight Manifest	BR-AA-01-00001	BR-AA-01-00001.04
American Airlines	CERS Report	BR-AA-01-00002	BR-AA-01-00002.08

<u>Business Records</u>	<u>Description</u>	<u>Beginning Bates</u>	<u>Ending Bates</u>
American Airlines	CERS Report - Additional Debrief	BR-AA-01-00005	BR-AA-01-00005.04
American Airlines	Captain & Flight Attendant Reports	BR-AA-01-00003	BR-AA-01-00004.03
American Airlines	Cost of Diversion Summary	BR-AA-01-00006	BR-AA-01-00006
<u>Photographs</u>			
Detention Room	Broken Glass, Room CB10-102	PH-01-00001	PH-01-00012
<u>Audio & Video</u>			
Officer BWC	Salt Lake PD, Case no. 2024-162077	AV-BWC-01-00001	AV-BWC-01-00008

As set forth in the pre-trial Protective Order (ECF No. 35), materials provided to the Defense in discovery in this matter contain Sensitive Security Information (“SSI”), the use and disclosure of which is governed by 49 U.S.C. § 114(r) & 49 C.F.R. Part 1520. As defined by 49 C.F.R. § 1520.5, SSI is information obtained or developed in the conduct of security activities, the disclosure of which TSA has determined would be detrimental to the security of transportation. 49 C.F.R. § 1520.5(a)(3).

Specific procedures exist for recognizing, marking, protecting, sharing, and destroying SSI. Under regulations promulgated by TSA at 49 C.F.R. Part 1520, pursuant to 49 U.S.C. § 114(r) (formerly 49 U.S.C. § 114(s)), SSI may not be disclosed to a non-covered person in criminal discovery except with the express consent of the Administrator or his designee. See 49 C.F.R. § 1520.9(a)(2). Materials containing SSI must also be appropriately marked in accordance with the requirements set forth in the regulation, specifically at sections 1520.9(a)(4) and 1520.13. Notably, materials containing SSI must contain protective marking – a header- and a distribution limitation statement- a footer- as set forth in section 1520.13. Questions regarding the marking, protection, and distribution of SSI should be addressed to David Hall, Attorney/Advisor, TSA, at SSI@tsa.dhs.gov or David.Hall@tsa.dhs.gov. **NOTE: Mr. Hall is not part of the United States’ prosecution team.**

Pursuant to Rule 12(b)(4)(A) of the Federal Rules of Criminal Procedure, the United States notifies the defense that, at trial, the United States may seek to use all physical evidence, statements made by the defendant and others, police reports, phone records, electronic evidence (including body camera footage), documents, and photographs obtained during the investigation. The United States reserves the right to introduce in its case-in-chief all tangible objects, physical, documentary, and electronic evidence, and all other evidence provided, made available, or identified in discovery.

As additional discoverable material becomes available, such material will be provided within a reasonable time. Throughout this case, the United States will provide material discoverable under Rules 16 and 26.2 of the Federal Rules of Criminal Procedure and the Jencks Act without requiring the defendant to make a specific request for such material. Upon the request of the defendant, the United States will permit and facilitate the defendant's own inspection, copying or photographing of those items described/defined in Rule 16(a)(1)(E).

The United States also hereby requests disclosure of evidence by the defendant (also known as reciprocal discovery) pursuant to Rule 16(b) of the Federal Rules of Criminal Procedure and DUCrimR 16-1(c). By providing Rule 16 discovery without requiring a specific request from the defense, the United States invokes a reciprocal obligation on the defendant under DUCrimR 16-1(c), which states that the defendant must allow the government to inspect and to copy the following, as further defined in Rule 16 of the Federal Rules of Criminal Procedure:

- a. Documents and tangible objects the defendant intends to introduce as evidence at trial;

- b. Reports of examinations and tests the defendant intends to introduce at trial or that were prepared by a witness whom the defendant intends to call at trial; and
- c. A written summary of the testimony of any expert the defendant intends to use at trial under Federal Rules of Evidence 702, 703 and 705.

The United States requests that the defendant provide to the government at a reasonable time before trial, but no later than five working days before trial, copies of the material referenced in this paragraph. Further, the United States requests continuing compliance with the reciprocal discovery following the initial disclosure.

The United States also hereby requests all written and recorded statements by any witness other than the defendant whom the defendant intends to call at trial or a hearing covered by the Jencks Act or Rule 26.2 of the Federal Rules of Criminal Procedure.

DATED this 20th day of September 2024.

TRINA A. HIGGINS
United States Attorney

/S/ Michael Kennedy

MICHAEL KENNEDY
Assistant United States Attorney

CERTIFICATE OF SERVICE

I certify that on the 20th day of September 2024, the Fourth Certificate of Compliance and Request for Reciprocal Discovery was filed electronically to the District Court, and caused to be served via USAfx, to the following:

Emily A. Stirba
Attorney for Eric Gapco
46 West Broadway, Suite 110
Salt Lake City, Utah 84101

/S/ Emily Gaitin

Emily Gaitin
Certified Paralegal